IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WP No. 6760 of 2006

Between :

K.Padmavathi .. Petitioner

And

The District Educational Officer-cum-Secretary, DSC 2001, Vizianagaram and two others .. Respondents

Dated :22nd August, 2006

JUDGMENT : (per JC,J)

The petitioner is a physically challenged person with hearing impairment. She completed B.A., and obtained Teacher's Training Course Certificate. The petitioner is qualified for the post of Secondary Grade Telugu Teacher. The 1st respondent herein issued notifications for the post of Secondary Grade Teachers in Vizianagaram District in the years 2001, 2002 and 2003. It is indicated in the respective notifications that for the year 2001, two posts are reserved in favour of hearing impaired female candidates and two posts are reserved in favour of hearing impaired candidates. Similarly, in the years 2002 and 2003, posts were reserved

the details of which may not be necessary for the present purpose. The petitioner applied pursuant to the above notifications in all the three years.

The petitioner complains in the writ petition that though she was a physically challenged person satisfying the criteria laid down in the "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, people who are not so qualified were appointed against the posts reserved in favour of physically challenged persons.

The petitioner filed OA No.4182 of 2002 questioning the selection process directing the case of the petitioner to be considered in accordance with law. Thereupon, the 4th respondent by his proceedings dated 30.5.2003 peremptorily rejected the case of the petitioner without any application of mind. Challenging the selection process of 2003, once again the petitioner filed another application in OA No. 6724 of 2003 which is pending. Along with the said OA, the petitioner sought some interim directions as the Administrative Tribunal did not pass any interim order nor rejected the application, the present writ petition came to be filed with the prayer as follows :

> "For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus to declare the inaction of the respondents herein as violative of provisions of `The persons with

Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and Article 253 of the Constitution of India directing the respondents herein to send all the female candidates who applied under the Physically Handicapped Hearing Impairment (Deaf) Category for the 4 posts of DSC 2001 to 2003 SGT Telugu for Vizianagaram District to be examined the appropriate Medical Board and to select the next meritorious genuine candidates and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The fact that the petitioner appeared in all the above mentioned three years for the selection process to the post of Secondary Grade Teacher is not in dispute. It is the stand of the respondents in the counter at para 3 that the candidate selected against the seats reserved in favour of the Physically Challenged Persons obtained better marks in the selection process and therefore they were selected. Those candidates produced medical certificates obtained from the District Medical Board, Vizianagaram to the effect that they suffer from the disability of hearing impairment which according to the counter affidavit verified by the Assistant

Director, Disability Welfare, Vizianagaram and then appointment orders were issued.

The issue regarding the procedure that is required to be followed in accordance with the above mentioned Act and the rules made there under fell for the consideration of this Court in WP No. 25048 of 2005. Various interim directions were passed in the said writ petition having regard to the importance of the issue for the reasons recorded by this Court and finally the writ petition was disposed of by an elaborate order dated 4.8.2006 examining the scheme and scope of the said enactment.

In view of the assertion made by the State that Certificate regarding the disability in the case of candidates belonging to hearing impairment category is required to be given by the ENT Hospital, Hyderabad, interim directions were issued in this case also earlier directing the petitioner and the other selected candidates in the above mentioned selection process be subjected to such an examination by the ENT Hospital, Hyderabad. The result as stated by the respondents in the counter affidavit at para 5 is as follows :

> 5. It is submitted that pursuant to the directions of the Hon'ble High Court, AP, Hyderabad, in WP No. 6760/2006 the District Educational Officer, Vizianagaram, has referred 04 selected candidates in DSC-2001, 2002 & 2003 along with the petitioner to ENT Hospital, Hyderabad. As per the medical report issued by the Medical Superintendent, ENT Hospital the referred candidates have disability of hearing as submitted below :

1. Tamatapu Jyothi, DSC-2001 01%
2. Vaddadi Madhavi, DSC-2001 10%
3. R.Prameela Rani, DSC-2001 01%
4. Y.Krishna Veni, DSC-2003 25%
5. Karri Padmavathi (Petitioner) 55%

From the above extracted paragraph of the counter affidavit, it is obvious that the petitioner is the only person who is qualified to seek appointment against the reserved post in favour of physically challenged persons under the hearing impairment category because a person with disability to claim the benefit of the provisions of the above mentioned Act must be a person suffering from not less than 40% of the disability as certified by the Medical authority by definition under Section 2(d) of the said Act. It is obvious from the above extract of the counter that all the four selected candidates in the above mentioned three years were persons who did not answer the description of the expression `person with disability' for the purpose of the above mentioned Act and only the petitioner answers the description.

In the circumstances, the allegations made in the writ petition stand proved beyond all doubt. This Court in the above mentioned circumstances has no option, but to follow the principles laid down in the decision referred to above and allow the writ petition and direct the respondents to appoint the petitioner forth with as Secondary Grade Telugu Teacher.

Having regard to the fact that the petitioner was

illegally and unjustly deprived of the opportunity of appointment notwithstanding the declaration of the law made by the Parliament and the fact that people who are utterly unqualified for filling up of the post have been appointed (admittedly with 11% disability were appointed as against those posts), we are of the opinion that the petitioner is entitled for public law damages which we quantify at Rs.One Lakh and it is open for the State to recover the said amount from those persons who are responsible for illegal appointments thereby depriving the opportunity of employment.

(J.CHELAMESWAR, J)

(M.VENKATESWARA REDDY, J)

22nd August, 2006.

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